IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

TRC.No. 25 of 2003

ORDER DATED 28.8.2001 IN TA.365/2000 OF SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE

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REVISION PETITIONER/RESPONDENT/RESPONDENT/REVENUE

STATE OF KERALA, REPRESENTED BY DEPUTY COMMISSIONER (LAW) COMMERCIAL TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) MR.K.B.PRADEEP

RESPONDENT/APPELLANT/APPELANT/ASSESSEE

M/S. PUNJAB AROMATICS, A.G.ROAD, CALICUT.

BY SRI.T.M.SREEDHARAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

T.R.C.No.25 of 2003

Dated, this the 5th day of September, 2007

ORDER

H.L.Dattu,C.J.

Revenue being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kozhikode in T.A.No.365 of 2000 dated 28th August, 2001 is before us in this Tax Revision Case.

(2) The Revenue has framed the following questions of law for our consideration and decision. They are as under:

> "(a) Were not the Tribunal and the First Appellate Authority in error in holding that the assessee is not liable to pay purchase tax under Section 5A of the KGST Act taking the view that red oil and sandalwood oil made out of it are one and the same commodity?
>
> (b) Were not the Tribunal and the First Appellate Authority in error in not considering the fact red oil and sandalwood oil have separate distinct identities as far as common parlance theory or commercial parlance theory are concerned?
>
> (c) In the facts and circumstances of the case, were not the Tribunal and the First Appellate Authority in error in not comprehending the correct concept of manufacture with reference to the factual situation in this case?
>
> (d) Is not the Tribunal in error in deleting the addition made for non production and non accounting of sales bills without even considering the fact that no evidence has been adduced by the assessee to prove cancellation of the bills?".

(3) Both sides would submit that the questions of law raised in this Tax Revision Case are no more *res integra* in view of what has been declared by this Court in the case of *State of Kerala* v. *Universal Enterprises*

[2007 (3) KLT SN 3 (Case No.2)]. In the said decision, this Court has stated as under:

> "Once the goods purchased by the dealer are used and cease to be available in that form for sale or purchase again to attract tax, the liability for purchase tax is attracted. By the 1989 Amendment, S.5A was amended to bring within the scope of purchase tax, items purchased from registered dealers without payment of tax for "use". Liability is attracted when goods purchased are consumed in the manufacture of other goods for sale. Since assessees have purchased raw material, namely, red oil and have consumed the same in the manufacture of sandalwood oil sold by them as final product, liability is attracted on the purchase turnover of red oil under S.5A(1)(a) of the Act. The object of the section is to rope in liability when the item purchased has not been subjected to any tax until it's purchase and the item ceases to exist after it's use by purchasing dealer".

In view of the law declared by this Court, the questions of law framed by the Revenue requires to be answered in favour of the Revenue and against the assessee. Accordingly, the Tax Revision Case is allowed.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-